

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6965 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DHIRUBHAI HARIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR. JOSHI, ASSTT. GP for Respondent No. 1 to 3

MS. DAWAVALA for Respondent No. 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/11/1999

ORAL JUDGEMENT

1. The District Magistrate, Ahmedabad, on 12th August 1999, passed an order detaining the petitioner in exercise of powers u/s 3[2] of the Prevention of Black Marketing & Maintenance of Supplies of Essential

Commodities Act, 1980 [for short, 'the Act'], on the ground that the petitioner was involved in malpractices relating to essential commodities like groundnut oil, cotton seed oil etc. The detaining authority came to a subjective satisfaction that detention was the only remedy for preventing the petitioner from continuing such activities and he therefore passed an order of detention.

2. On 19th August 1999, a representation was made by one Shri Purshottambhai Haribhai Patel, brother of the petitioner - Shri Dhirubhai Haribhai Patel to the District Magistrate, Ahmedabad.

3. The petitioner has approached this court with a petition under Article 226 of the Constitution of India assailing the order of detention on various grounds. The main ground being that the representation made to the detaining authority was not forwarded by the detaining authority expeditiously and the detention is, therefore, bad in law.

4. Mr. Thakkar, learned Advocate appearing for the petitioner has restricted his arguments to this point only. He has drawn attention of this Court to para 9 of the affidavit in reply filed by Deputy Secretary to the Government of Gujarat, Food, Civil Supplies & Consumers Affairs Department and submitted that the representation dated 19/8/99 was forwarded by the District Magistrate vide letter dated 8/9/99 in which it was stated that the said representation was received by the District Magistrate on 27th August 1999 and by that time, as the order of detention was already approved by the State Government, the detaining authority had no power to consider the representation and therefore, it was sent to the State Government by the detaining authority on 8th September 1999. The said representation was received by the Special Branch of Food, Civil Supplies & Consumers Affairs Department on 13th September 1999. Mr. Thakkar, learned advocate, therefore, submitted that there was an unexplained delay in forwarding the representation between 27th August 1999 and 8th September 1999. Mr. Thakkar placed reliance on an unreported decision of this Court in the case of Hasmukhbhai M. Patel v/s State of Gujarat and others, in Special Civil Application No.6454 of 1998 decided on 24th September 1998 and submitted that, in that case, a delay of 6 days was considered to be sufficient to vitiate the detention and render the same as illegal. Mr. Thakkar also pressed into service a decision in the case of Urmilaben Navnitlal Gandhi v/s Commissioner of Police, Surat city reported in 1994 [2] GLH UJ 10 and submitted that, in view of the above

decision, this petition may be allowed.

5. Mr. Joshi, learned AGP represents respondents No.1, 2 and 3, whereas respondent No.4 is represented by Ms. Davawala.

6. Mr. Joshi has opposed this petition on the ground that there is no extensive delay in sending the representation and no prejudice is caused to the petitioner and therefore, the petition may be dismissed.

7. If the affidavit in reply is considered, there is no explanation coming forward for the delay between 27th August 1999 and 8th September 1999. The inaction during this period in the office of the detaining authority has not been tried to be explained. In such detention matters, it is expected of such authorities to act as expeditiously as possible. It is true that whether the delay is reasonable or not, would depend upon facts of each case, but when no attempt is made to explain the delay, there is no scope for considering whether that delay is reasonable or not.

8. In the case of Urmilaben Navnitlal Gandhi [supra], the facts were that the proposal for detention of the detainee was made on 18th September 1993. The order of detention was passed and served on detainee on 22nd September 1993 and the detention was approved by the State Government on 30th September 1993. After considering the opinion in favour of detention by the Advisory Board, the State Government confirmed the detention on 18th November 1993. In the mean time, a representation was made by or on behalf of detainee on 12th October 1993 which was received by the detaining authority on 14th October 1993. The detaining authority rejected the representation on 15th October 1993. The Division Bench of this Court in that decision, after referring to the case of Naval Shanker Dave v/s State of Gujarat reported in AIR 1994 SC 1496, concluded that the detaining had no power to consider the representation of the detainee after the order of detention was approved by the State Government. The Division Bench further observed that the detaining authority had received the representation on 14th November 1993 and rejected the same on 15th October 1993 [there appears to be some printing error]. The representation was forwarded to the State Government on 16th October 1993 and office forwarded it to the State Government on 19th / 21st October 1993. The Court therefore observed that the delay of 5 days between 16th October and 21st October 1993 in forwarding the representation remained

unexplained by the concerned authority except that it was urged by the counsel for the opponents that there were intervening holidays. The court observed that the authorities concerned were not aware of the urgency of forwarding the representation to the State Government for its consideration on merits, in light of the decision in the case of Harish Pahwa v/s State of U.P. reported in AIR 1981 SC 1126.

9. The above decision would squarely apply to the facts of the present case. In this case also, the representation was received by the authority on 27th August 1999 and the same came to be forwarded to the State Government on 8th September 1999. Why there was such delay, has not been tried to be explained and therefore, the continued detention of the petitioner would be vitiated and would be rendered illegal. In the circumstances, the petition deserves to be allowed.

10. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Ahmedabad on 12th of August 1999 in respect of the petitioner Shri Dhirubhai Haribhai Patel is hereby set aside with no orders as to costs. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly.

[ A.L. DAVE, J. ]

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